

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NORTH SEATTLE HEALTH CENTER
CORP, a Washington Corporation

Plaintiff,

vs.

ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY, a Foreign
Corporation,

Defendant.

ALLSTATE INDEMNITY COMPANY, a
Foreign Corporation, ALLSTATE
INSURANCE COMPANY, a Foreign
Corporation, ALLSTATE PROPERTY &
CASUALTY INSURANCE COMPANY, a
Foreign Corporation, and NORTHBROOK
INDEMNITY COMPANY, a Foreign
Corporation,

Third Party Plaintiffs,

vs.

DAEHYUN CHOI and HYUN JOO KWAN,
husband and wife, and the marital community
composed thereof, BESTWAY
CHIROPRACTIC CLINIC CORPORATION,
a Washington Corporation, DRDC
CORPORATION INC., a Washington

NO. 2:14-cv-01680-JAR

**MOTION FOR CONTEMPT
AGAINST DAEHYUN CHOI AND
HYUN JOO KWAN**

**NOTED ON MOTION CALENDAR:
JANUARY 13, 2017**

(Without Oral Argument)

Corporation, and GOOD CARE SPINE
CLINIC CORPORATION, a Washington
Corporation,

Third Party Defendants.

COMES NOW Defendant Allstate Fire and Casualty Insurance Company and Third
Party Plaintiffs Allstate Indemnity Company, Allstate Insurance Company, and Allstate
Property and Casualty Insurance Company (hereinafter "Allstate"), by and through its attorneys
of record, COLE, WATHEN, LEID, & HALL, P.C., and hereby submits the following Motion
for Contempt re Debtors and Third Party Defendants Daehyun Choi and Hyun Joo Kwan for
Refusal to Attend Judgment Depositions.

I. RELIEF REQUESTED

Allstate respectfully requests that this Court enter an order:

- 1) Finding Daehyun Choi and Hyun Joo Kwan in Contempt for failing to appear at
their deposition set on October 3, 2016, following the order of judgment issued by the Court;
- 2) Finding sanctions are appropriate for the reasonable attorney fees and costs
incurred in bringing this motion, and the court reporter fees for appearing at the deposition on
October 3, 2016;
- 3) Issuing a Bench Warrant for debtors Daehyun Choi and Hyun Joo Kwan.

II. FACTS

On October 31, 2014, Allstate removed this action from Snohomish County Superior
Court to this court. (Not. of Rem. (Dkt. # 1)) Plaintiff North Seattle Health Center Corporation
had filed a complaint in state court against Defendant Allstate Fire & Casualty Insurance
Company alleging claims for tortious interference with a contractual and business relationship
and tortious interference with business expectancy. (Compl. (Dkt. # 1-1).) Allstate Fire &

1 Casualty Insurance Company filed an answer to Plaintiff's complaint that included
2 counterclaims against Plaintiff for violation of Washington's Consumer Protection Act
3 ("CPA"), RCW ch. 19.86, common law civil fraud, violation of Washington's Criminal
4 Profiteering Act, RCW ch. 9A.82, unjust enrichment, and piercing the corporate veil. (Ans.
5 (Dkt. # 3-1) ¶¶ 7.1-10.8.) In the answer, Allstate also brought claims against Third-Party
6 Defendants Daehyun Choi, Hyun Joo Kwan, DRDC Corporation, Inc., Bestway Chiropractic
7 Clinic Corporation, and Good Care Spine Clinic Corporation. (*Id.* ¶ corporate practice of
8 medicine doctrine, violation of the Professional Services Corporation Act, RCW ch. 18.100,
9 violation of Washington's Anti-Rebate Statute, RCW ch. 19.68, violation of Washington's
10 CPA, common law civil fraud, violation of Washington's Criminal Profiteering Act, unjust
11 enrichment, and piercing the corporate veil. (*Id.* ¶¶ 15.1-22.8.)

13 Allstate alleged that Plaintiff and Third-Party Defendants were involved in the business
14 of operating medical clinics. (*See, e.g., id.* ¶¶ 6.5, 11.3, 12.4, 13.4, 14.3.) The Third-Party
15 Defendant medical clinics were all allegedly owned and operated by the same individual. (*See,*
16 *e.g., id.* ¶ 11.2.) Allstate alleged that Plaintiff and the Third-Party Defendants engaged in
17 duplicative billing practices for the services provided to their patients and unnecessary referrals
18 to related clinics. (*See id.* ¶¶ 11.5, 17.5-17.6.) ¶ 11.1-14.4.)

19 On August 25 and 27, 2015, Allstate moved for the entry of default against Plaintiff and
20 Third-Party Defendants as a sanction for discovery violations and failure to abide by the court's
21 prior orders. (*See* Mot. for Default (Dkt. # 34); Supp. Mot. for Default (Dkt. # 36).) On
22 September 17, 2015, the court held a hearing concerning Allstate's motions for sanctions and
23

1 default based on Plaintiff's and Third-Party Defendants' failure to obtain counsel as ordered by
2 the court and respond to Allstate's discovery requests. (*See* 9/17/15 Min. Entry (Dkt. # 38).)
3 Neither Plaintiff, nor Third-Party Defendants responded to Allstate's motions or appeared at
4 the September 17, 2015, hearing. (*See id.*; see generally Dkt.) At the hearing, the court granted
5 Allstate's motions, dismissed Plaintiff's claims, and found Plaintiff and Third-Party Defendants
6 in default. (9/17/15 Min. Entry.)

7 Allstate filed an amended motion for default judgment on February 16, 2016. (Am.
8 Mot.). The amended motion for default judgment was granted on April 26th, 2016. Declaration
9 of Jenna Goltermann (Goltermann Decl.), Exhibit A. Allstate sent subpoenas for depositions to
10 both Daeyhun Choi and Hyun Joo Kwan for depositions on October 3, 2016. Goltermann Decl.,
11 Exhibits B & C. Both Daeyhun Choi and Hyun Joo Kwan failed to appear at their depositions
12 with no explanation of their absence. Goltermann Decl., Exhibits D & E.

14 **III. ISSUES PRESENTED**

- 15 • Should this Court order the Debtors in Contempt of court for failing to appear for
16 their debtor depositions, as provided under RCW 6.32.010?
- 17 • Should this Court find sanctions are appropriate for the reasonable attorney fees and
18 costs incurred in bringing this motion and the court reporter fees for appearing at the
19 deposition on October 3, 2016?
- 20 • Should this Court issue a Bench Warrant for debtors Daeyhun Choi and Hyun Joo
21 Kwan?

22 **IV. EVIDENCE RELIED UPON**

23 A. Declaration of Jenna R. Goltermann, with attached Exhibits;

1 B. The pleadings and records previously filed in this action.

2 V. LEGAL AUTHORITY

3 To find a party in civil contempt, the court must find that the offending party knowingly
4 violated a definite and specific court order, and the moving party has the burden of showing the
5 violation by clear and convincing evidence. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178,
6 1190-91 (9th Cir. 2003). The burden then shifts to the contemnors to demonstrate why they
7 were unable to comply. *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). A
8 person fails to act as ordered by the court when he fails to take all the reasonable steps within
9 his power to insure compliance with the court's order. *Shuffler*, 720 F.2d at 1146-47 (internal
10 quotations and citations omitted).

11 RCW 6.32.010 provides (in part):

12 At any time within ten years after entry of a judgment for the sum of twenty-five dollars or
13 over, unless the time is extended in accordance with RCW 6.17.020(3), upon application by the
14 judgment creditor such court or judge may, by an order, require the judgment debtor to appear
15 at a specified time and place before the judge granting the order, or a referee appointed by the
16 judge, to answer concerning the same; and the judge to whom application is made under this
17 chapter may, if it is made to appear to him or her by the affidavit of the judgment creditor, his
18 or her agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest
19 the debtor and bring him or her before the judge granting the order.

20 An entry of an order for judgment was entered against the Third Party Defendants on
21 April 26, 2016. *See* Goltermann Decl., Exhibit A. The judgment exceeds the \$25.00 threshold
22 laid out in RCW 6.32.010, entitling Allstate to take an examination of the judgment debtor.
23 This judgment examination was scheduled by Allstate for October 3, 2016. The Third Party
Defendants were subpoenaed to appear for examination at the offices of Allstate's counsel.
Goltermann Decl., Exhibits B & C. Both Daehyun Choi and Hyun Joo Kwan failed to appear
at their judgment examinations, providing no explanation for their absences. Goltermann Decl.
Exhibits E & F. Further, Allstate timely served Daehyun Choi and Hyun Joo Kwan with

1 amended Notices of Deposition. As such, they were aware and knew they were violating a
2 specific order of the Court by failing to appear for their depositions on October 3, 2016.

3 Both Daehyun Choi and Hyun Joo Kwan's testimony is clearly pertinent to the
4 adversary proceeding. There can be no question that Allstate is entitled to take and complete
5 debtor depositions in order to proceed with the collection process to attempt to satisfy their
6 judgment.

7 Allstate further requests that sanctions be levied against the debtors in the amount of
8 \$2,500.00. Sanctions are appropriate in this matter as the Debtors actions to date have
9 necessitated the need for further Court intervention. The Orders issued by this Court have been
10 disregarded by the Debtors. Allstate has no choice but to seek a bench warrant by this Court to
11 compel the attendance of the Debtors, and ensure their appearance at any future deposition.
12 Any further delay only harms Allstate's ability to collect on its judgment, and allows the
13 Debtors more time to further conceal assets. This Court should not condone these delay tactics.

14 **VI. CONCLUSION**

15 Allstate respectfully requests that this Court find that Daehyun Choi and Hyun Joo
16 Kwan are in contempt for failing to produce the Court Ordered documents and failing to
17 appear for their depositions. Allstate further requests this Court find sanctions are appropriate
18 for the reasonable attorney fees and costs incurred in bringing this motion and the court
19 reporter fees for appearing at the deposition on October 3, 2013. Lastly, Allstate requests that
20 this Court issue a Bench Warrant for debtors Daehyun Choi and Hyun Joo Kwan.

21
22 DATED this 28th day of December, 2016.

23 ///

1 COLE | WATHEN | LEID | HALL, P.C.

2 /s/ Jenna R. Goltermann

3 /s/Rory W. Leid, III

4 RORY W. LEID, III, WSBA #25075

JENNA R GOLTERMANN, WSBA #49935

Attorneys for Defendant American Commerce

303 Battery Street

Seattle, WA 98121-1419

T: 206-622-0494 / F: 206-587-2476

1 **CERTIFICATE OF SERVICE**

2 The undersigned makes the following declaration certified to be true under penalty of
3 perjury pursuant to RCW 9A.72.085:

4 On the date given below, I hereby certify that I caused the foregoing to be filed using
5 the United States District Court for Western District of Washington – Document Filing System
6 (CM/ECF) and a true and correct copy to be served on the following in the manner indicated:
7

8 Daehyun Choi and Hyun Joo Kwan
9 North Seattle Health Center
4629 168th St. SW #B
Lynnwood, WA 98037

VIA LEGAL PROCESS SERVICE

10
11 I certify under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct.

13 EXECUTED this 28th day of December, 2016, at Seattle, Washington.

14 */s/ Kathleen M. Forgette*

15 _____
Kathleen M. Forgette, Legal Assistant
16 kforgette@cwlhlaw.com
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